

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

THOMAS K. MILLS,

Plaintiff,

v.

ZACHERY JONES, et al.

Defendants.

No. 1:23-cv-01214-JLT-SAB (PC)

ORDER DENYING PLAINTIFF’S MOTION
REGARDING EXHAUSTION OF
ADMINISTRATIVE REMEDIES AS
UNNECESSARY

(ECF No. 52)

Plaintiff is proceeding pro se and in forma pauperis in this action filed pursuant to 42 U.S.C. § 1983.

Currently before the Court is Plaintiff’s request to “enter a motion to prove my exhaustion of my administra[tive] remedies,” filed April 17, 2024. Plaintiff’s motion shall be denied.

I.

DISCUSSION

The Prison Litigation Reform Act provides that “[n]o action shall be brought with respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a). Exhaustion of administrative remedies is mandatory and “unexhausted claims cannot be brought in court.” Jones v. Bock, 549 U.S. 199, 211 (2007). Inmates are required to “complete the administrative review process in accordance with the

1 applicable procedural rules, including deadlines, as a precondition to bringing suit in federal
2 court.” Woodford v. Ngo, 548 U.S. 81, 88, 93 (2006). The exhaustion requirement applies to all
3 inmate suits relating to prison life, Porter v. Nussle, 534 U.S. 516, 532 (2002), regardless of the
4 relief sought by the prisoner or offered by the administrative process, Booth v. Churner, 532 U.S.
5 731, 741 (2001).

6 The failure to exhaust administrative remedies is an affirmative defense, which the
7 defendant must plead and prove. Jones, 549 U.S. at 204, 216. The defendant bears the burden of
8 producing evidence that proves a failure to exhaust; and, summary judgment is appropriate only if
9 the undisputed evidence, viewed in the light most favorable to the plaintiff, shows the plaintiff
10 failed to exhaust. Albino v. Baca, 747 F.3d 1162, 1166 (9th Cir. 2014). On a motion for summary
11 judgment, the defendant must prove (1) the existence of an available administrative remedy and
12 (2) that Plaintiff failed to exhaust that remedy. Williams v. Paramo, 775 F.3d 1182, 1191 (9th Cir.
13 2015) (citations omitted). If the defendant meets this burden, “the burden shifts to the plaintiff,
14 who must show that there is something particular in his case that made the existing and generally
15 available administrative remedies effectively unavailable to him.” Id. (citations omitted). If the
16 plaintiff fails to meet this burden, the court must dismiss the unexhausted claims or action without
17 prejudice. See Lira v. Herrera, 427 F.3d 1164, 1175 (9th Cir. 2005).

18 As stated above, Plaintiff is not required to plead and/or prove exhaustion of the
19 administrative remedies because it is an affirmative defense. Accordingly, Plaintiff’s request to
20 “enter a motion” to prove exhaustion of the administrative remedies is denied.

21 IT IS SO ORDERED.

22 Dated: April 18, 2024

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24 UNITED STATES MAGISTRATE JUDGE